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December 30, 2005

By Hand

RECEIVED

DEC 30 2005

Federal Communications Commission
Office of Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554
Attn: Policy Division, Media Bureau

Re: KASY-TV, Albuquerque, New Mexico (Facility ID No. 55049)
KWBQ(TV), Santa Fe, New Mexico (Facility ID No. 76268)

Dear Ms. Dortch:

Transmitted herewith on behalf of ACME Television Licenses of New Mexico, LLC, licensee of television stations KASY-TV, Albuquerque, New Mexico, and KWBQ(TV), Santa Fe, New Mexico, are an original and two copies of a Petition for Waiver filed pursuant to Section 79.1(f) of the Commission's rules, 47 C.F.R. §79.1(f), seeking an exemption of the Commission's closed captioning requirements.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP

Attorneys for
ACME Television Licenses of New Mexico, LLC

By: Andrew Kersting
Andrew S. Kersting

Enclosure

cc: Certificate of Service (by hand)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
ACME Television Licenses of New Mexico, LLC	))
	)
Video Programming Accessibility	)
	)
Petition for Waiver of Closed Captioning Requirements	))

To: Deputy Chief, Policy Division
Media Bureau

Petition for Waiver

ACME Television Licenses of New Mexico, LLC ("ACME"), licensee of broadcast television stations KASY-TV in Albuquerque, New Mexico and KWBQ(TV) in Santa Fe, New Mexico (collectively, the "Stations"), acting pursuant to Section 79.1(f) of the Commission's rules, 47 C.F.R. §79.1(f), hereby submits this Petition for Waiver ("Petition") seeking an exemption of the Commission's closed captioning requirements. In support of this Petition, the following is stated:

1. Section 613 of the Communications Act, as amended (the "Act"), 47 U.S.C. §613, requires that broadcasters like ACME provide closed captioning for programming aired on their respective stations pursuant to a schedule established by the Commission. In enacting Section 613 of the Act, Congress recognized that, in certain limited situations, the costs of captioning may impose an undue burden on video programming providers or owners and authorized the Commission to adopt appropriate exemptions. 47 U.S.C. §613(d)(1). Congress defined "undue burden" to mean "significant difficulty or expense." 47 U.S.C. §613(e). When determining if the closed captioning requirements will impose an undue burden, the Commission is required to

consider the following factors: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner. 47 U.S.C. §613(e).

2. The Commission established a schedule for implementation of the closed captioning requirement in 1997. *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272 (1997) ("*Report and Order*"). The *Report and Order* also established the exemptions mandated by Congress, including one to account for the "undue burden" that could be imposed on television licensees like ACME. 47 C.F.R. §79.1(f).

3. Consideration of the factors identified by Congress entitles ACME to a full exemption under Section 79.1(f) with respect to the closed captioning requirement. The Stations currently air five (5) programs which will not be closed captioned by January 1, 2006. In January 2006, the Stations will begin airing an additional program, Homes & Land, which also will not be closed captioned (collectively, the "Programs").[1] With the exception of a program produced by JCR Advertising, the remaining five Programs are all locally-produced. All of the Programs are produced by the program provider with the exception of Frost Mortgage, which is produced by KASY-TV in Albuquerque.

4. Each of the Programs is broadcast pursuant to a separate program agreement that has a term ranging from three-to-twelve months. It is impossible to provide any realistic estimate of revenue that the programs could generate on an annual basis because of the short-term and non-continuous nature of the program agreements, especially considering that they may

[1] The Programs consist of the following: Caleb Crump, Frost Mortgage, Homes & Land, On Target Productions, JCR Advertising, and MDR Consulting.

not be renewed. However, if the existing agreements were renewed under their current terms, the Programs conceivably could generate between $250,000 and $325,000 over a 12-month period. *See* Declaration of Thomas D. Allen, ACME's Executive Vice President and Chief Financial Officer, annexed hereto as Attachment A at ¶5.

5. The cost of obtaining the equipment necessary to close caption the Programs is approximately $10,000 - $12,000. *Id.* at ¶6. As an additional expense, ACME would need to hire an additional full-time employee who would be responsible for operating the closed captioning equipment and ensuring that the Programs (as well as any new or additional local programming in the future) are properly close captioned. The cost of this additional full-time employee, including salary and benefits, would be approximately $25,000 - $30,000 per year. *Id.* at ¶6. That combined cost is particularly prohibitive because there is no assurance that each of the Programs will be broadcast after the respective agreement for each particular program expires. As an alternative means of complying with the Commission's closed captioning requirements, ACME could retain a third-party vendor to close caption the Stations' Programs, which would cost approximately $200 per half hour of programming, or $83,000 to $104,000 on an annual basis for all of the Programs. *Id.* at ¶6.

6. ACME is not in a position to endure that additional loss. As stated by Mr. Allen, the Stations suffered a net loss in 2004 of $10.605 million, and their net loss through the third quarter of 2005 was $9.418 million.[2] Attachment A at ¶4. As reflected above, even if ACME were to outsource its closed captioning obligations to a third-party vendor, the Stations would still incur an additional loss of at least $83,000 per year, which would not be offset through any programming which they are not already airing or intending to air. Due to the Stations' current

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[2] The financial figures are based on financial statements for the Station. To the extent the Commission's staff deems it necessary, ACME is willing to submit those financial statements as a supplement to this Petition if they are treated on a confidential basis.

financial posture, ACME would have no choice but to replace the local programming in the Stations' schedule with lower priced national infomercials. That result would not serve the public interest because it would substantially reduce the amount of local programming aired on the Stations, diminish the Stations' ties with their respective local communities, and leave viewers in the Albuquerque-Santa Fe DMA with fewer programming choices.

7. The foregoing facts fall within the parameters established by Congress and the Commission for demonstrating an undue burden in the provision of closed captioned video programming. ACME therefore requests a full exemption pursuant to Section 79.1(f) of the Commission's rules. In the event this Petition is granted and the Stations return to profitability, ACME will promptly notify the Commission and comply with the closed caption requirements within a reasonable period of time.

WHEREFORE, in view of the foregoing, ACME respectfully requests that this Petition be granted and that the Stations be fully exempt from the Commission's closed-captioning requirements.

Respectfully submitted,

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Attorneys for
ACME TELEVISION LICENSES OF NEW MEXICO, LLC

By: ______________________
Lewis J. Paper
Andrew S. Kersting

ATTACHMENT A

Declaration of Thomas D. Allen

DECLARATION

Thomas D. Allen hereby declares as follows:

1. I am the Executive Vice President and Chief Financial Officer ("CFO") of ACME Television Licenses of New Mexico, LLC ("ACME"), licensee of television stations KWBQ(TV), in Santa Fe, New Mexico and KASY(TV), in Albuquerque, New Mexico (the "Stations"), which are located in the Albuquerque-Santa Fe, New Mexico DMA. I have served in this capacity since August 21, 1997.

2. As Executive Vice President and CFO of ACME, I have ultimate responsibility for the financial operation of the Stations.

3. This Declaration is being provided in support of a Petition for Waiver which is being filed with the Federal Communications Commission ("FCC") seeking an exemption of the closed captioning rules.

4. Based on my review of ACME's financial statements, the Stations' net loss for calendar year 2004 was $10,605,000. During the first three quarters of calendar year 2005, the Stations' net loss was $9,418,000.

5. The Stations regularly air four (4) locally-produced programs and one (1) nationally produced program and will soon begin airing a fifth locally produced program – none of which are close captioned. In each case, the local producer pays the Stations a certain amount of money to air each week's segment(s). The collective gross advertising revenue which the Stations expects to receive for these programs is $250,000 - $325,000 per year, based on our best guess of the projected number of programs aired over the course of the coming year.

6. Based on estimates I have obtained, the cost of acquiring the equipment necessary for the Station to comply with the FCC's closed captioning requirements is approximately $10,000 - $12,000 and would require one additional staff person at a total cost for salary and benefits of $25,000 - $30,000 per year. If the Stations were to outsource its obligation to close

caption these programs through a third party vendor, the cost would be approximately $200 per half hour of programming, which, based on expected airings, would be approximately $83,000 – $104,000 on an annual basis.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Signed and dated this 30th day of December, 2005.

Thomas D. Allen
Executive Vice President & CFO

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 2005, a copy of the foregoing "Petition for Waiver" was hand delivered to the following:

Steven A. Broeckaert
Deputy Chief
Policy Division
Media Bureau
Federal Communications Commission
The Portals II, Room 4-A865
445 Twelfth Street, S.W.
Washington, DC 20554

Nancy Washington

Nancy Washington